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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8365

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(MO4500135321)]

Notice of Final Supplementary Rules for Fort Ord National Monument, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Final supplementary rules.

SUMMARY: The California State Director of the Bureau of Land Management (BLM) is issuing final supplementary rules related to dog management and other public safety issues on public lands at Fort Ord National Monument (FONM), California.

DATES: These rules are effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit inquiries by mail, hand-delivery, or electronic mail.

Mail: FONM Manager, BLM, Central Coast Field Office, 940 2nd Avenue, Marina, CA 93933. Electronic mail: blm_ca_fonm_dog_mgt_plan@blm.gov.

FOR FURTHER INFORMATION CONTACT: Eric Morgan, FONM Manager, Bureau of Land Management, Central Coast Field Office, 940 2nd Avenue, Marina, CA. 93933, at telephone: 831-582-2200, or email: emorgan@blm.gov. Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 800-877-8339 to contact Mr. Morgan during normal business hours. The Service is available 24

hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

I. Background

The former Fort Ord military installation closed in 1994. The Secretary of the Army transferred administration of part of the installation to the Department of the Interior. In 2012, the lands became part of the 14,651 acre FONM pursuant to Presidential Proclamation No. 8803. The Army continues to manage approximately 7,446 acres of the FONM and will transfer those lands to the BLM for administration following a munitions cleanup being performed in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act.

On December 5, 1996, the BLM issued an emergency closure notice (61 FR 64530) that applied to former Fort Ord lands that had been transferred to the Department of the Interior.

On September 7, 2007, the BLM State Director approved a Record of Decision for the Southern Diablo Mountain Range and Central Coast of California Resource Management Plan (RMP). To protect health and public safety from exposure to munitions and to promote coordination with local law enforcement, that RMP directed the BLM's Central Coast Field Office to develop a dog-management plan for the FONM, which was completed in July 2016. As set forth later, these final rules are consistent with both the 2016 dog-management plan and the 2007 RMP.

In addition to dog-management provisions, these final supplementary rules include revised versions of the restrictions in the 1996 emergency closure order. In these final

supplementary rules, the BLM is also adopting some Monterey County ordinances, in order to facilitate cooperation between BLM rangers and local law enforcement officials.

The BLM California State Director proposed these supplementary rules in the *Federal Register* on November 4, 2016 (81 FR 76905). The BLM received no public comments in response.

II. Discussion

These supplementary rules are necessary to support the mission of the BLM to protect the natural resources of the FONM, and to protect the health and safety of those using the public lands.

The supplementary rules (see Section IV) are broken into three categories. Supplementary rules numbered 1 through 9 are new, and implement new direction from the approved dog-management plan. Supplementary rules 10 through 15 are not completely new, since they are revisions of previous restrictions that were established in 1996 (see 61 FR 64530), and are consistent with the national monument proclamation of 2012 (i.e., Proclamation 8803), and the BLM 2007 RMP. Finally, supplementary rules 16 and 17 are existing Monterey County ordinances that the BLM has adopted as supplementary rules in order to facilitate cooperation between BLM rangers and local law enforcement officials.

III. Procedural Matters

Regulatory Planning and Review(Executive Orders 12866 and 13563)

These final supplementary rules are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Orders 12866 and 13563. They do not have an effect of \$100 million or more on the economy.

The final supplementary rules do not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The final supplementary rules do not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The final supplementary rules do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients nor do they raise novel legal or policy issues. They merely impose rules of conduct and impose other limitations on certain recreational and commercial activities on certain public lands to protect natural resources and human health and safety.

National Environmental Policy Act

The BLM prepared an environmental assessment (EA) that analyzed different dog-management alternatives on FONM under Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C), pursuant to 43 CFR 46.205(b) and 46.210(i). On July 5, 2016, the BLM approved the Final FONM Dog Management Plan and associated EA (DOI-BLM-CA-C090-2016-0021-EA) and Finding of No Significant Impact (FONSI). All of the final supplementary rules were analyzed in the Dog Plan EA and FONSI. The final supplementary rules are also consistent with the Record of Decision for the Southern Diablo Mountain Range and Central Coast of California RMP approved in 2007.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended 5 U.S.C. 601-612, to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility

analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The final supplementary rules merely impose reasonable restrictions on certain recreational activities on public lands in order to protect natural resources and the environment, and provide for human health and safety. Therefore, the BLM has determined under the RFA that the final supplementary rules do not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

The final supplementary rules are not a “major rule” as defined under 5 U.S.C. 804(2). The final supplementary rules merely revise the rules of conduct for public use of limited areas of public lands and do not affect commercial or business activities of any kind.

Unfunded Mandates Reform Act

The final supplementary rules do not impose an unfunded mandate of more than \$100 million per year on State, local, or tribal governments in the aggregate, or on the private sector, nor do they have a significant or unique effect on small governments. The final supplementary rules have no effect on governmental or tribal entities and impose no requirements on any of these entities. The final supplementary rules merely revise the rules of conduct for public use of limited areas of public lands and do not affect tribal, commercial, or business activities of any kind. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act at 2 U.S.C. 1531.

Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights (Takings)

The final supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights. Therefore, the BLM has determined that the final supplementary rules do not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The final supplementary rules do not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the BLM has determined that the final supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the BLM has determined that the final supplementary rules do not unduly burden the judicial system, and that they meet the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

In accordance with Executive Order 13175, the BLM has found that the final supplementary rules do not include policies that have tribal implications. The final supplementary rules merely revise the rules of conduct for public use of limited areas of public lands.

Executive Order 13352, Facilitation of Cooperative Conservation

In accordance with Executive Order 13352, the BLM has determined that these final supplementary rules do not impede facilitating cooperation conservation; take appropriate account of and consider the interests of persons with ownership or other legally recognized interests in land or other natural resources. The rules properly accommodate local participation in the Federal decision-making process, and provide that the programs, projects, and activities are consistent with protecting public health and safety.

Information Quality Act

In developing these supplementary rules, the BLM did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106-554). In accordance with the Information Quality Act, the Department of the Interior (DOI) has issued guidance regarding the quality of information that it relies on for regulatory decisions. This guidance is available on the DOI's Web site at http://www.doi.gov/ocio/information_management/iq.cfm.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Under Executive Order 13211, the BLM has determined that the final supplementary rules do not comprise a significant energy action, and that they do not have an adverse effect on energy supplies, production, or consumption.

Paperwork Reduction Act

The final supplementary rules do not directly provide for any information collection that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3521. Moreover, any information collection that may result

from Federal criminal investigations or prosecutions conducted under the final supplementary rules are exempt from the provisions of 44 U.S.C. 3518(c)(1).

Author

The principal author of these final supplementary rules is Eric Morgan, Monument Manager, Central Coast Field Office, 940 2nd Avenue, Marina, CA 93933.

IV. Final Supplementary Rules

For the reasons stated in the preamble and under the authorities for final supplementary rules found under 43 CFR 8365.1-6, 43 U.S.C. 1733(a), 16 U.S.C. 670h(c)(5), and 43 U.S.C. 315a, the BLM California State Director issues final supplementary rules for public lands managed by the BLM within the boundaries of the FONM, to read as follows:

Definitions

Designated route means any road or trail that the BLM has signed and shown on trail maps where public use is authorized.

Dog means any domestic dog that is not classified as a “service animal.”

Off-leash-opportunity route means a specific road or trail on FONM that has been designated by the BLM to allow some opportunities for dogs to be off leash under specific circumstances.

Service animal means a dog that is individually trained to do work or perform tasks for people with disabilities as covered under the Americans with Disabilities Act.

Street-legal vehicle means a vehicle, such as an automobile, motorcycle, or light truck, that is equipped and licensed for use on a public street and/or highway and that is subject to registration under the California Vehicle Code 4000(a)(1).

Unattended dog means any dog that is unaccompanied by an owner and/or handler whether on tether or otherwise.

Yield means slowing or stopping forward progress to a point where it is possible to safely pass another visitor without injuring, startling, or surprising that visitor. For bicycles, the passing speed shall be no greater than 10 mph on roads, and 5 mph on single-track trails.

Final Supplementary Rules

Unless otherwise authorized by the BLM, the following supplementary rules apply to all BLM-managed public lands on the Fort Ord National Monument (FONM):

Final Supplementary Rules from the Dog Management Plan

1. Dogs are not permitted in the Inland Range Planning Unit. Service animals accompanying a disabled person as accommodated by the Americans with Disabilities Act are excluded from this provision.
2. Dogs must be under control and on a leash or cord not to exceed 6 feet in length, at all times while on a road or trail that has not been designated as an “off-leash-opportunity route.”
3. To eliminate exposure to munitions, individuals and/or their dog must not walk or roam off a designated route, including any route designated as an “off-leash-opportunity route.”
4. Dogs must be under control, or kept on a leash or cord not to exceed 6 feet in length, on a designated “off-leash-opportunity route” when within 100 feet of another person and/or dog that is not with your party.
5. Dogs must not roam over 50 feet away from you while on a designated “off-leash-opportunity route.”

6. Dogs must not enter any vernal pool or pond, or roam within 20 feet of any such area, unless you and your dog are on a route designated for public use.
7. A leash for each dog is required to be in your possession.
8. Dogs must not be left unattended, even if on a tether, within a crate, or within an unoccupied motor vehicle.
9. Visitors must yield the path, on both roads and trails, to other visitors in the following manner: Bicycles must yield to pedestrians and equestrians; and pedestrians must yield to equestrians. For bicycles, the passing speed shall be no greater than 10 mph on roads, and 5 mph on single-track trails.

Final Supplementary Rules That Clarify Existing Restrictions Established in 1996 and Direction from the 2007 Record of Decision:

10. Motorized vehicles and other motorized devices, including electronic bicycles, are prohibited on all roads and trails excluding Creekside Terrace Road and Badger Hills Driveway. Motorized vehicle use on these two roadways is restricted to highway licensed street-legal vehicles.
11. Use and/or occupancy of all lands within the FONM, including leaving personal property unattended, is prohibited between ½ hour after sunset and ½ hour before sunrise.
12. All use (including pet use) is restricted to designated routes and trails. Open routes and trails are indicated on BLM maps and signed with route or trail markers. Any unsigned route which does not appear on the most current BLM map is closed to all uses.
13. Campfires and other open flame fires are prohibited.
14. Possession or discharge of fireworks, including “safe and sane” fireworks, is prohibited.

15. Wood cutting and the collection of downed wood are prohibited.

Final FONM Supplementary Rules That Are Currently Monterey County Ordinances:

16. It shall be unlawful for the owner or person having custody of any dog, either willfully or through failure to exercise due care or control, to allow said dog to defecate and to allow the feces thereafter to remain on FONM other than within trash receptacles provided for such purposes. This includes bagged feces - Reference Monterey County ordinance, 8.36.030.

17. All dogs under 4 months of age shall be kept under control by the owner, keeper, or harborer when on FONM - Reference Monterey County ordinance, 8.20.020.

18. Dogs on FONM shall wear a license tag attached at all times to a collar, harness, or other suitable device upon the dog for which the license tag was issued - Reference Monterey County ordinance, 8.08.040.

Exemptions

The following persons are exempt from these final supplementary rules: Any Federal, State, or local officer or employee in the scope of their duties; members of any organized law enforcement, rescue, or fire-fighting force in performance of an official duty; and any person whose activities are authorized in writing by the BLM.

Enforcement

Any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0-7, or both.

In accordance with 43 CFR 8365.1-7, State or local officials may also impose penalties for violations of California law.

Joe Stout

Bureau of Land Management

Acting State Director, California

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